IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO.9271 OF 1993

For Approval and Signature:

HON'BLE MR.JUSTICE RAVI R.TRIPATHI

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BARIA LILABEN MULJIBHAI

Versus

KHEDA DIST EDUCATION COMMITTEE & ANR.

Appearance:

1. Special Civil Application No. 9271 of 1993

MS.VINITA VINAYAK for MRS.SANGEETA N. PAHWA for Petitioner

MRS.DISHA NANAVATI for MR.N.D.NANAVATI for Respondents

CORAM : HON'BLE MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 26/03/2004

ORAL JUDGEMENT

1. The present petition is filed seeking a direction against the respondents to the effect that the petitioner be appointed as a Primary Teacher as per her turn in the Select List prepared in 1989-90 and a further direction

to the respondents to operate the existing Select List to the extent of vacancies existing in the cadre of Primary Teachers in District-Kheda and so on and so forth.

2. The short facts of the case are that the respondent no.1, Kheda District Education Committee, caused an advertisement on 30th September, 1989, inviting applications for the post of Primary Teachers. The advertisement also mentioned that there were as many as 900 vacancies and the vacancies arising in future were also to be taken into consideration. It is the case of the petitioner that the petitioner was successful in selection and her name appeared at Serial No.983 in the Select List. It is also the case of the petitioner that after having given appointment to 472 candidates, the petitioner and other similarly situated persons noticed some movement on the part of the respondents for preparing of new Select List and, therefore, several persons like the petitioner approached this Court by filing petitions, being Special Civil Application Nos.4300 of 1990, 4142 of 1992 and other allied matters. It is submitted that in those petitions, this Court was pleased to grant interim relief to the effect that, `a new Select List shall not be prepared by the respondents and the existing select list be operated'. The case of the petitioner is that it is in this Select List that the petitioner stood at Serial No.983 and as per the order of this Court, the petitioner ought to have been given appointment, operating the Select List in seriatim. It is further case of the petitioner that the respondents, for the reasons best known to them, did not operate the Select List in serial order and overlooking the claim of the petitioner, gave appointment to the candidates, whose names were at Serial Nos.1150, 1152, 1155, 1186, 1191, 1197 and 1200. It is, therefore, submitted that there is a clear violation of Articles 14 and 16 of the Constitution of India and, therefore, the petitioner is entitled for the reliefs as prayed for.

3. Mrs.Disha Nanavati for Mr.N.D.Nanavati, learned Advocate for the petitioner, submitted that this is a matter wherein claim is made for getting appointment only on the ground that the name of the petitioner was included in the Select List. She submitted that it is a well settled legal position that merely because a name of a candidate is included in the Select List, no right accrues in favour of the candidate and, therefore, this petition is required to be dismissed on this sole ground. She further submitted that in the alternative, the matter being that of the year 1993 and the Select List being that of the year 1989-90, the petitioner will not be

answering the eligibility criterion today and, therefore also, the petitioner is not entitled to get any relief in the petition.

4. Taking into consideration the rival contentions of both the learned Advocates, more particularly, the fact that the Select List was prepared in the year 1989-90 and that it was ordered to be operated by this Court in serial order, a copy of the order dated 19th June, 1992 passed in Special Civil Application No.4142 of 1992 is produced at Annexure-B to the petition, whereby it is directed that, `the existing list shall operate if no new list is prepared and appointment shall be made according to the list which is in existence'. The petitioner has also placed on record a Resolution passed in the Special Meeting of the District Panchayat's Education Committee held on 30th November, 1991 wherein Resolution No.386 was passed and it was resolved to operate the Select List in serial order. That being so, the respondents were under an obligation to operate the Select List in serial order and while doing so, the respondents should have considered the case of the petitioner. What is submitted by the learned Advocate for the respondents has no application to the facts of the present case because the petitioner stood at Serial No.983 in the Select List, while the averment of the petitioner made in paragraph 2.4 is that the candidates, whose names appeared at Serial No.1150 onwards, were given appointment, it is a case which will fall within the purview of Articles 14 and 16 of the Constitution of India and, therefore, the petitioner will be entitled for the reliefs as prayed for.

5. Though the matter is of the year 1993, there is no affidavit-in-reply on record and thus, the averments made in the petition remain uncontroverted. Be that as it may. The fact remains that there was an order passed by this Court directing the respondents to operate the Select List. The Select List could have been operated only in serial order and without there being any specific reason for not considering the case of the petitioner, the claim of the petitioner could not have been overlooked by the respondents.

6. In view of the aforesaid discussion, the petition is allowed. The respondents are directed to consider the case of the petitioner as it stood on the day the Select List was prepared and the petitioner, if otherwise found eligible for appointment, should be given appointment on the post of primary teacher. Rule is made absolute. No order as to costs.

(Ravi R. Tripathi, J.)

kamlesh*